

SCHOOL SAFETY/DISCIPLINE MANUAL

SECTION II: BULLYING AND HAZING

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II. BULLYING AND HAZING

A. BULLYING

Students who bully others present a problem that has faced educators for generations. The term “school-house bully,” is dated but the issues are very real for today’s students. However, while the problem is not new, the risk for grave consequences is better understood. Recent studies demonstrate that many students who are victims of bullying subsequently act out very violently, as evidenced by the number of victims who have been involved in school shootings.

Idaho does not have a statute defining bullying and/or specifically prohibiting bullying in schools. As a result, student’s misconduct that is categorized as bullying will vary from school district to school district. Additionally, many districts do not have a policy specifically addressing bullying, but rely solely on a “code of conduct” for students.

Definition of Bullying

Bullying is defined as misconduct that is characterized by the aggressor(s) repeatedly engaging in negative actions against another student in an attempt to exercise control over the victim.¹

Bullying generally involves a student repeatedly doing or saying something to or about another in an attempt to exercise control over the victim. Further, while the student’s conduct may be similar to incidents of harassment, bullying is distinguished from illegal harassment in that it is not necessarily motivated by discrimination against an individual in a protected class or retaliation.

Bullying is generally characterized by aggressive behavior, or intentional harm doing, that is carried out repeatedly over time. It also involves an imbalance of power between the victim and the aggressor, possibly based on age, physical prowess, or socio-economic status. Bullying often occurs without apparent provocation.

Physical Abuse. Bullying may involve acts of physical abuse, including, but not limited to:

- Hitting;
- Pushing;
- Tripping;
- Kicking;
- Blocking or restraining another student’s movement;
- Sexual misconduct;
- Causing damage to another student’s clothing or possessions; or
- Taking another student’s belongings.

¹ Olweus, D., Limber, S. & Mihalic, S.F., *Blueprints for Violence Prevention, Book Nine: Bullying Prevention Program*; Boulder, CO: Center for the Study and Prevention of Violence (1999).

Verbal Abuse. The actions that constitute bullying do not require physical contact and may be based solely on verbal abuse, such as:

- Name calling;
- Threatening;
- Sexual misconduct;
- Taunting; or
- Malicious teasing.

Psychological Abuse. Bullying may occur even when the victim is not directly subjected to physical or verbal abuse, which is sometimes referred to as “psychological bullying.”

Incidents may involve:

- Spreading harmful or inappropriate rumors regarding another;
- Drawing inappropriate pictures or writing inappropriate statements regarding another; or
- Intentionally excluding another from groups or similar activities.

B. HAZING

Idaho Code § 18-917 defines hazing as subjecting a person to bodily danger or physical harm or a likelihood of bodily danger or physical harm, or requiring, encouraging, authorizing or permitting that the person be subjected to any of the following:

- Total or substantial nudity on the part of the person;
- Compelled ingestion of any substance by the person;
- Wearing or carrying of any obscene or physically burdensome article by the person;
- Physical assaults upon or offensive physical contact with the person;
- Participation by the person in boxing matches, excessive number of calisthenics, or other physical contests;
- Transportation and abandonment of the person;
- Confinement of the person to unreasonably small, unventilated, unsanitary or unlighted areas;
- Sleep deprivation; or
- Assignment of pranks to be performed by the person.

Hazing, as defined by Idaho law, is limited to those actions taken and situations created in connection with initiation into or affiliation with any group or organization. Further, the statute specifically excludes “customary athletic events or similar contests or competitions” and corporal punishment administered by officials or employees of public schools when in accordance with policies adopted by local boards of education.²

² Idaho Code §18-917(3)

Prohibition Against Secret Societies

Idaho also prohibits the establishment of fraternities, sororities, and secret societies at public elementary and secondary schools. Idaho Code § 33-1901 provides:

Fraternities, sororities, and other student organizations, including secret societies, whose membership is comprised in whole or in part of pupils enrolled in public elementary or secondary schools of Idaho are unlawful.

It is unlawful for any person to solicit an elementary or secondary school pupil to become a member of any such organizations; and,

No pupil enrolled in a public or secondary school shall be or become a member, or pledge himself to become a member, of any such organization.

The definition of a fraternity, sorority, or secret society is set forth in Idaho Code §33-1902 as follows:

A student organization comprised in whole or in part of pupils enrolled in a public elementary or secondary school. Members are selected on the basis of decisions by the membership and not on the basis of the right of any student qualified by rules and regulations of the school to be a member. Idaho Code § 33-1902.

Organizations such as the Boy Scouts of America, Girl Scouts of America, Campfire Girls, DeMolay, YMCA, YWCA, and other similar organizations are not included in the above definition.

The school district is responsible for enforcement of the prohibition against fraternities, sororities, or secret societies. Idaho Code §33-1903 states:

Any public school student found to be in violation of the provisions pertinent to fraternities, sororities, and secret societies at the elementary and secondary school levels may suffer revocation of the rights and privileges of the school, denial of graduation, deprivation of credit, suspension, or expulsion through proceedings by the board of trustees.

C. INVESTIGATING ALLEGATIONS OF BULLYING OR HAZING

The school district has an obligation to initiate an investigation of any allegations of bullying and hazing as soon as practicable after receiving notice of the allegation. It is not necessary that the student's allegation be in writing. Rather, any allegations, whether verbal or written, which can reasonably be categorized as bullying or hazing, should be investigated immediately.

When an allegation is received, the administrator must first determine whether any interim steps should be taken:

- Determine the nature of the allegations. Require that the victim make a written statement;
- Determine whether the victim requires any immediate assistance;
- Contact the victim's parent;
- Contact law enforcement, if appropriate;
- Contact the alleged perpetrator(s) to determine their response;
- Determine whether the students need to be separated;
- Determine whether the alleged perpetrator(s) should be suspended pending the outcome of the investigation. If suspension is deemed appropriate, the student must be given rudimentary due process prior to the suspension; and
- Determine the identity of any witnesses.

Investigation

To create a safe environment for students, the school district must act swiftly to investigate allegations of bullying or hazing. The investigation should begin immediately, unless the matter has been referred to law enforcement and it is conducting a criminal investigation. To avoid interfering with the criminal investigation and/or tainting it in some manner, the school district should delay an investigation until law enforcement has concluded its investigation.

Selecting an individual to investigate the allegations is important. The individual should be neutral and have no personal relationship with any students that could be viewed as creating bias. The individual must also be able to begin the investigation quickly and have the skills necessary to effectively interview the parties and witnesses.

Students who are parties to the allegations or witnesses to specific conduct should be interviewed separately in a non-threatening environment. They should be informed that the investigation is confidential in nature and that they are expected to not discuss their participation in the investigation. Additionally, the investigator should inform them that the district prohibits retaliatory conduct. It may be determined appropriate for the investigator to allow the student's parent to be present during the interview, but such determination is on a case-by-case basis.

The investigation report must be in writing and kept by the district administration regardless of the outcome of the investigation. The written report must document the nature of the allegations, the individuals interviewed, and a summary of the information gleaned from each interviewee. The report must also conclude whether or not the facts support a conclusion that bullying or hazing occurred.

Corrective Measures

Upon reviewing the investigation report, the administrator must determine whether disciplinary action is necessary. If disciplinary action is taken, the student is entitled to due process as set forth in Idaho Code §33-205. *See* Section 5, General Disciplinary Procedures.

Additionally, other corrective measures may be appropriate. For example, educational programs addressing anti-bullying or anti-hazing issues may be necessary when there appears to be a tolerance for such behavior among the students.

D. RESPONSIBILITIES OF THE SCHOOL DISTRICT

The school district has a responsibility to take reasonable steps to protect all students from bullying and hazing:

Policy Development. Develop policies to prohibit bullying and hazing. As necessary, the policies should set forth the general categories or types of prohibited behavior so that students are on notice of the district's expectations.

Notice of Policies. Publish the policies in both the staff and student handbooks. If necessary, publish a summary of the policies, using age-appropriate language.

Curriculum. Incorporate anti-bullying and anti-hazing education in the curriculum, as appropriate for the students' age and maturity.

Student Training. Educate students as to the terms of the policies and the expected behaviors. Simply prohibiting the inappropriate behaviors is not sufficient to create a safe environment for students. The district must actively teach students what constitutes bullying and hazing, and the district's expectations regarding acceptable behavior. Students must be educated to report allegations and seek intervention as necessary for the safety of themselves and others.

Staff Training. Educate all staff members as to what constitutes bullying and hazing and the district's policy prohibiting such behavior.

Complaint Process. Develop a process for students to file complaints of harassment; the process should be age-appropriate and accessible. Notify students of the process that is in place in their school.

Intervention. Require staff members to intervene, as appropriate, when conduct reasonably appears to constitute bullying or hazing. Provide appropriate training to staff so they can effectively intervene. Require staff members to document the incident.

Reporting. Require that staff members report to a building administrator any conduct which they reasonably believe to involve bullying or hazing, and, if appropriate, to direct the student(s) to an administrator. Require staff members to document the report.

Immediate Response. Take interim steps when allegations of bullying or hazing occur, as necessary (report allegations to law enforcement, separate students, etc.).

Investigation. Respond to all reports of bullying and hazing. This is a legal obligation of the school district. Conduct an investigation of the allegations, regardless of their nature, in a timely manner.

Corrective Measures. Take appropriate corrective measures, including disciplinary action, when appropriate.

E. LIABILITY ISSUES

School districts throughout the United States are being charged with liability involving instances of bullying or hazing. Similar to the cases involving harassment, the issue often turns on whether the district had knowledge of the behavior and failed to take appropriate action. Barring such knowledge, the school district will generally not be found to be liable for injuries to a student who is bullied or hazed.

Stevenson v. Martin County Board of Education, 93 F. Supp. 2d 644 (E.D.N.C. 1999).

A former student and his parents brought a lawsuit against the school district, alleging that the school's inability to control bullies who beat up the student violated his constitutional rights, including the 14th Amendment of the U.S. Constitution for deprivation of property without due process of law. Additionally, the student and his parents brought a claim under Section 1983 alleging deprivation of a right to public education and impliedly alleging deliberate indifference to a known duty under Title IV of the Safe and Drug-Free Schools Act.

During the first two months of the 1998-99 school year, Alex was robbed during lunch, assaulted during art class, repeatedly harassed and threatened by a fellow student and that student's friends on school campus during school hours, and assaulted while in the school hallway. At that point, the parents withdrew Alex and enrolled him in a private school. Plaintiffs alleged that the final assault upon Alex caused him physical damage and the combination of taunting and assaults caused him mental suffering.

The federal district court held that other circuits have uniformly rejected the position that a student is entitled to affirmative protection, under a due process liberty interest, while at school. "An affirmative duty only arises when 'the state has exercised its power so as to render an individual unable to care for himself or herself.'" The court further held that compulsory education does not render school children so helpless that an affirmative constitutional duty to protect arises. "At most, the state might require a child to attend school but it cannot be suggested that compulsory school attendance makes a child unable to care for basic human needs. The parents still retain primary responsibility."

In addressing the Safe Schools Act, the court found that since Congress enacted it in 1994, the U.S. Department of Education has not promulgated any regulations that explain a student's rights under the Act, and no federal court has relied upon the Act for any purpose. Rather, the court held that the Act is a grant program and "to contend that this act places defendants on notice that they could be held liable for student on student violence is severely misplaced."

F. CHECKLIST WHEN ALLEGATIONS OF BULLYING OR HAZING OCCUR

- Refer the individual to an appropriate administrator or designee.
- Request that the victim write a summary of the allegations.
- Contact the victim's parent to advise them that an allegation has been made and the school is addressing it.
- Contact the alleged perpetrator and ask for a written response to the allegations.
- Determine whether the actions of the alleged perpetrator may be criminal in nature; if so, refer the allegations to law enforcement.
- If witnesses are identified, request that they give a written statement.
- Review the allegations to determine the complexity of the investigation and whether the alleged perpetrator needs to be suspended pending the outcome of the investigation.
- Prior to suspending the student, provide rudimentary due process.
- Select an individual to conduct the investigation. If law enforcement is conducting an investigation, delay the school's investigation until it is completed.
- Make witnesses (students and staff) available for interviews.
- Review investigation report and take appropriate disciplinary action, affording due process. Take other corrective measures, if appropriate.
- Inform all parties and witnesses that any retaliatory action against others involved in the investigation is prohibited.

G. SAMPLE POLICIES

Bullying Prohibition, Policy No. 506.50

Hazing Prohibition, Policy No. 552

H. SCENARIOS

It is the policy of this district to maintain a safe school environment for all students, while attending school, riding the school bus, and when attending district-sponsored activities on school premises or at other locations. Bullying, regardless of the specific nature of the students' behavior, is disruptive to a safe school environment and will not be tolerated.

DEFINITION

Bullying is defined as misconduct by a student(s), which is characterized by the aggressor(s) repeatedly engaging in negative actions against another student(s) in an attempt to exercise control over the victim. Bullying is generally characterized by aggressive or intentionally harmful behavior, which is carried out repeatedly over time.

PROHIBITED BEHAVIOR

Students attending district schools are prohibited from engaging in the following behaviors:

- 1. Physical abuse against a student, including, but not limited to, hitting, pushing, tripping, kicking, blocking, or restraining another's movement; sexual misconduct; causing damage to another's clothing or possessions; and taking another's belongings.*
- 2. Verbal abuse against a student, including, but not limited to, name calling, threatening, sexual misconduct, taunting, and malicious teasing.*
- 3. Psychological abuse against a student, including, but not limited to, spreading harmful or inappropriate rumors regarding another, drawing inappropriate pictures, or writing inappropriate statements regarding another, and intentionally excluding another from groups, or similar activities.*

INVESTIGATION

The school administrator or designee will investigate any allegations of misconduct that are reasonably characterized as bullying. At the discretion of the school principal and/or superintendent, the alleged perpetrator(s) may be suspended pending the outcome of the investigation.

DISCIPLINARY ACTION

Students who engage in bullying will be disciplined as determined to be appropriate, up to and including suspension and/or expulsion.



LEGAL REFERENCE:

Idaho Code Section 33-512

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

This school district seeks to promote a safe environment where students may participate in a variety of extracurricular activities without compromising their health, safety, or welfare. Membership in groups and other organizations sponsored by this district is intended to provide students with athletic, social, intellectual, leadership, and service opportunities to complement the academic program. The educational purpose of sponsoring such organizations is compromised by hazing activities of any nature, as such activities are harmful to students. Students and staff are prohibited from engaging in any hazing activity, on or off school premises.

DEFINITION

Hazing is defined as any act by a person, whether individually or in concert with others, against a student as a condition of attaining membership, or any office or status, in connection with any district-sponsored group or organization, when such act is intended, or is reasonably expected to have the effect of *humiliating, embarrassing, intimidating, or demeaning a student, or endangering the mental or physical health of a student. Hazing also includes soliciting, directing, aiding, or otherwise participating actively or passively in such acts. Hazing occurs regardless of the consent or willingness of a student to participate in the activity.*

PROHIBITIONS

No student or staff member shall ever require, encourage, authorize or permit a student to be subjected to any of the following:

- Total or substantial nudity;
- Compelled ingestion of any substance;
- Wearing or carrying of any obscene or physically burdensome article;
- Physical assaults upon a student or offensive physical contact;
- Participation by a student in boxing matches, excessive number of calisthenics, or other physical contests;
- Transportation and abandonment;
- Confinement of a student to unreasonably small, unventilated, unsanitary, or unlighted areas;
- Sleep deprivation;
- Assignment of pranks to be performed by a student; or
- Any activity undertaken for the purpose of causing ridicule or humiliation of a student.

EXCEPTIONS

Hazing does not include customary athletic events or similar contests or competitions, and is limited to those actions taken and situations created in connection with initiation into or affiliation with any group or organization. Also, the definition of hazing does not include corporal punishment administered in accordance with this district's policies.

REPORTING REQUIREMENTS

Preventing hazing is the responsibility of every student and staff member of this district. All staff members and students who become aware of hazing activities are required to immediately report such incidents to the building principal. The building principal, or designee, will investigate and determine whether hazing has occurred. If hazing has occurred, appropriate disciplinary action will be taken against the students and/or staff members involved. Additionally, any staff member or student who violates this policy will be referred to the local law enforcement agency for prosecution.

**LEGAL REFERENCE:**

Idaho Code § 18-917

ADOPTED:**AMENDED:**

**Language in text set forth in italics is optional.*

H. SCENARIOS - THREATS/BULLYING

Susan is angry with two of her classmates, Lily and Joan. They always seem to get everything she wants and she thinks the teachers like them better than they like her. Susan is bright and pretty, but just doesn't seem to fit into the group of popular girls. That was bad enough, and then both Lily and Joan got after-school jobs that Susan had applied for. Susan just knows Lily and Joan must have said something bad about her to the employer or gossiped around town about her, and that is why she didn't get the job. Susan would really like to get back at them.

In English class the teacher assigns students to keep a diary. Susan is an excellent student and would-be writer, and always completes her assignments. She is glad to have this assignment, and eagerly begins writing her thoughts about Lily and Joan. Susan really would like to have really bad things happen to both of them. Susan writes about these wishes in graphic and gory detail, including violence and mutilation, just like the video games she enjoys. She also describes how the two girls would be killed.

Susan keeps her English class "diary" in her backpack in her locker and each day she adds more of "why she hates" these girls. The "diary" gets large and bulky. She can't resist telling another girl in the English class about it. This girl thinks it sounds "weird and scary," and she tells other members of the class and finally tells the school counselor.

Lily and Joan hear about the "diary" and go to Susan's locker, search her backpack, find the diary, and take it. They use the copier in the yearbook office and copy a number of the pages that describe terrible violent acts against them. They then take the diary and put it back into Susan's backpack. In the meantime, the counselor has talked with the principal, and both the counselor and principal are going to talk with Susan. When they do talk with her, she shows them the diary and notices that pages may have been crumpled.

Susan says she is just completing her English assignment, it is just a story, and a well-written one, too. In fact, it is so well written others believe what it says. Susan complains that someone has been in her locker and it looks like someone has looked at the diary. She really is mad now and says it must be Lily and Joan who have broken into her locker. Susan demands that the principal do something. When Susan sees Lily and Joan, she says "the next time I won't just be writing, I can do that you know."

Lily and Joan are frightened, and talk with their parents, who demand that that principal do something about Susan.

QUESTIONS:

- What is the issue that is being complained about?
- Is there anything wrong with writing violent stories about the death of classmates?
- How do you know if there is danger to the students?

- Should anyone be disciplined? If so, who?
- Does it matter that Susan has been seeing the counselor regularly for depression and is on medication for depression?

RESPONSES TO QUESTIONS:

- **What is the issue that is being complained about?**

This scenario describes behavior and verbal statements that should be taken seriously and constitute threats against other students, and perhaps personnel at the school. Any incident involving threats to the physical safety and/or well-being of others should be immediately reported to law enforcement for investigation and response. If law enforcement is not able to respond quickly to the concerns, the administration should act to have an initial investigation to determine the potential of harm. Suspension of the student may be appropriate pending a law enforcement investigation or other investigation.

- **Is there anything wrong with writing violent stories about the death of classmates?**

A student may have a First Amendment/Free Speech right to write about violent matters unless the school assignment has put constraints on the assignment with regard to the content of the writing assignment. However, the First Amendment may not protect writings that contain threats to others. Administrators should error on the side of safety of the school environment. Writing about the death of fellow students should be considered to be out of the ordinary, resulting in a discussion with the student and the student's parents/guardian, and for a referral to the school counselor. While writings containing violent images, especially those involving known persons, may not be a violation of policy or illegal behavior, a formal response to the writing is appropriate. Further, if the writings result in disruption to the educational process, disciplinary actions may be appropriate.

- **How do you know if there is danger to the students?**

Assessment of the danger to other students should be reviewed with law enforcement and with mental health professionals, if possible.

- **Should anyone be disciplined? If so, who?**

If it is determined that there is a violation of district policy, disciplinary measures would be appropriate. In the circumstances outlined, the diary may have resulted in a disruption to the educational process and, further, there may be violations of policy in the accessing of another student's locker without permission.

- **Does it matter that Susan has been seeing the counselor regularly for depression and is on medication for depression?**

Consideration of the student's involvement in counseling may be appropriate. A request should be made for consent from the parent/student to allow the mental health professional to share information with school personnel.